IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIRST DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.14201 of 2004

Between:

1 Sri Gupta Silver Palace, Sole Proprietory Concern rep. by its Proprietor, Sri G.R.V.Suman Babu, S/o G.B.Gupta Rao, R/o.13/606, Chinna Bazar, Nellore.
2 G.R.V.Suman Babu, s/o G.B.Gupta Rao, R/o.13/606, Chinna Bazar, Nellore.

..... PETITIONERS

AND

1 State Bank of India, Fathe Khan Peta Branch, Nellore rep. by its Chief Manager.
2 G.B.Gupta Rao, S/o Guruvaiah, R/o 13/606, Chinna Bazar, Nellore. (Deleted as per Court Order

dated 18-08-2004)
3 Debts Recovery Tribunal, Dwaraka Nagar, II Lane, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus, declaring the action initiated by the 1st respondent by filing O.A.No.178/2003 pending before 3rd respondent under DRT Act having invoked the provision under SRFAESI Act, 2002 as invalid, illegal and unconstitutional being violative of the Article 14 of the Constitution of India.

Counsel for the Petitioners: Smt.CH.VEDAVANI

Counsel for Respondent No.1: Mrs. P. Bala Rani, SC for SBI
Counsel for Respondent No.3: Mr.ARAJASHEKAR REDDY, SC FOR CG

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

The grievance of the petitioner is that first respondent Bank having invoked the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SERFAESI Act), have thereafter chosen to institute proceedings under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before Debt Recovery Tribunal. Though under the provisions of SERFAESI Act, there is no express bar in respondent Bank taking out simultaneous proceedings under this Act and also before the Debt Recovery Tribunal for recovery of the dues, but it will be in the best interest of the parties that one of the proceedings should continue and the other should remain suspended inasmuch as, in case, by resorting to the provisions of SERFAESI Act and on sale of the assets, entire debt will be recovered, automatically proceedings before the Debt Recovery Tribunal shall stand abated and no useful purpose will be served by simultaneously continuing the proceedings under the Recovery of Debts due to Banks and Financial Institutions Act.

Learned counsel for the petitioner submits that while the proceedings under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act are continued, there can be stay of the proceedings under the provisions of the SERFAESI Act. However, she rightly submits that the petitioners have no objection in proceeding first with the proceedings under the SERFAESI Act and till then the proceedings before the Debt Recovery Tribunal can be suspended.

Accordingly, we will dispose of the writ petition with a direction that respondent Bank will proceed pursuant to the notice issued under Section 13(2) of the SERFAESI Act and recover the debt on the realization of the sale proceeds from out of the secured assets, and remaining shortfall will be recovered by proceeding further with the proceedings taken before the Debt Recovery Tribunal. Till assets are sold and sale proceeds are realized by the Bank, proceedings before the Debt Recovery Tribunal shall be kept in abeyance.

Order accordingly.

Writ petition stands disposed of.

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(DEVINDER GUPTA, C.J.)

1st November 2004.

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(C.V.RAMULU, J.)

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To

1 The Chief Manager, State Bank of India, Fathe Khan Peta Branch, Nellore.
2 Debts Recovery Tribunal, Dwaraka Nagar, II Lane, Visakhapatnam.

3 2 CD copies.